

### **REMARKS**

Applicants respectfully request consideration of the application in view of the foregoing amendments and the following remarks.

Claims 6, 10, 12, 15, 16, and 20-22 are canceled herein without prejudice to pursuing the subject matter of said claims in a later filed divisional application(s).

New claim 30 is added. Support for the new claim can be found, *inter alia*, in original claim 15 and on page 12, lines 31-32, of the Specification. No new matter has been added.

#### ***Information Disclosure Statement***

Submitted herewith is an Information Disclosure Statement/PTO 1449 in accordance with 37 CFR § 1.97(b)(1). Applicants note that included in the PTO 1449 form are Amendments and Office Actions submitted during the prosecution of co-pending U.S. Serial Number 10/545,515 (hereinafter "the '515 application"), filed August 15, 2005, which claims subject matter closely related to the subject matter claimed in the instant application. Both the '515 application and the instant application were subject to an obligation of assignment to Istituto Di Ricerche Di Biologia Molecolare P. Angeletti SPA (IRBM) at the time that the respective inventions were made. Applicants further note that the publication of the corresponding international equivalent of the '515 application (WO 2004/072287) was included in the PTO 1449, filed on February 9, 2006, in the instant case.

#### ***Response to Restriction Requirement***

The Office Action states that the application contains the following inventions, which are subject to restriction under 35 U.S.C. §§ 121 and 372:

- Group I, Claims 1, 6-9, 15, 16 and 19, drawn to the special technical feature of a synthetic nucleic acid comprising the codon optimized sequence encoding a rhesus monkey CEA as set forth in SEQ ID NO:2 or 3, and a method for expressing CEA using the nucleic acid of claim 1.
- Group II, Claims 10, 12 and 20-22, drawn to the special technical feature of a method of preventing or treating cancer using nucleic acid of claim 1 and/or an adenoviral vector comprising a nucleic acid encoding a rhesus monkey CEA protein

The Office Action further states that Applicant is required to elect a single one of these inventions to which the claims must be restricted.

By way of this response, Applicants respectfully elect Group I, claims 1, 6-9, 15, 16 and 19, without traverse. This election is made without prejudice to the prosecution of the non-elected claims in a related patent application(s). Applicants note that claims to the non-elected invention are canceled herein.


The Office Action further states that if Group I is elected, a further election of species is required. Specifically, it is stated that Applicant must elect Ad5, Ad6, or Ad24 from claim 16. Applicants disagree with this requirement for election of species, but nonetheless submit that the cancellation of claim 16 herein renders this requirement moot.

*Summary*

Applicants assert all claims are in condition for allowance and a favorable action on the merits is earnestly solicited.

If the Examiner believes that a telephone conference would be of value, he is requested to call the undersigned attorney at the number listed below.

Respectfully submitted,

By   
Alysia A. Finnegan  
Reg. No.: 48,878  
Attorney for Applicants

MERCK & CO., INC.  
P.O. Box 2000  
Rahway, NJ 07065-0907  
(732) 594-2583

Date: 11/30/2007